IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.Nos.1361, 1362, 1363, 1364 and 1427 of 2007

Vasuki .. Petitioner in H.C.P.No.1361/2007

V.M.Selvaraj .. Petitioner in H.C.P.No.1362/2007

J.Florence .. Petitioner in H.C.P.No.1363/2007

Rajamanickam .. Petitioner in H.C.P.No.1364/2007

Janaki .. Petitioner in H.C.P.No.1427/2007

Vs.

1. The District Collector and
   District Magistrate
   Kancheepuram District
   Kancheepuram.

2. The Secretary to Government
   Government of Tamil Nadu
   Prohibition and Excise Department
   Fort St. George, Chennai-9. .. Respondents in all the petitions

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PRAYER: Petitions filed under Article 226 of the Constitution of India, for issue of Writ of Habeas Corpus, to call for the records of the detention order in BDFGISSV.Nos.48, 50, 49, 46 and 47 of 2007, dated 24.7.2007 passed by the first respondent, to quash the same and to direct the respondents to produce the detenus viz., Kothandan, son of Ramu, Prasath, son of Selvaraj, Joswa James Premkumar, son of Gopal, Ega @ Egambaram, son of Rajamanickam and Raja @ Ceasing Raja, son of Narasimman, now confined in Central Prison, Puzhal, Chennai, before this Court and to set them at liberty.

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For Petitioners : M/s.Ganesh & Ganesh

For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

COMMON ORDER

(Order of the Court was made by P.D.DINAKARAN,J.)

All the Habeas Corpus Petitions filed on behalf of the detenus were heard together and are being disposed of by this common order, as the basic allegations are common.

2. The first respondent herein clamped orders of detention as against the detenus as the said authority arrived at the subjective satisfaction that the said detenus are Goondas and they have to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982). Challenging the abovesaid detention orders, the present Habeas Corpus Petitions are filed by the relatives of the detenus.

3.1. The order of detention dated 24.7.2007 came to be passed based on the ground case said to have taken place on 22.6.2007 at about 17.45 hours, when one Parthiban, who was in-charge of a Cool Drinks Stall situated at Guduvancherry bazzaar, was doing his work, the detenus along with his associates came in two cars under the guidance of one Guna @ Gunasekaran by possessing weapons like aruva, patta knife, wooden logs and apprehended the complainant within the shop and robbed Rs.1100/- from him. On hearing the hue and cry, the public rushed to the spot and they were threatened by the detenus and his associates at the point of knife and country bombs by uttering that they would do away them. The public ran hither and thither apprehending danger to their lives and the nearby shops were closed, resulting in traffic dislocation. Due to the atrocious activities, the normalcy in that area got dislocated and terror and panic was created. In the melee, the detenus and his associates escaped from the spot. Based on the complaint, a case was registered in Crime No.331 of 2007 on the file of Guduvancheri Police Station for the offences punishable under Sections 147, 148, 341, 506(ii), 395, 397 IPC read with Sections 3 and 5 of the Indian Explosive Substances Act, 1908 and Section 25 (1)(a) (1)(b) of the Arms Act. The Inspector of Police took up the case for investigation and arrested the detenus and remanded them to judicial custody.

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3.2. The second respondent, taking the above case as a ground case and three adverse cases pending against the detenus in Crime Nos.327 and 328 of 2007 on the file of Guduvancheri Police Station and Crime No.364/2007 on the file of Maraimalai Nagar Police Station for the offences punishable under Sections 147, 148, 341, 363, 384, 506(ii), 397 and 307 IPC, having satisfied that there is a compelling necessity to detain the detenus in order to prevent them from indulging in the activities which are prejudicial to the maintenance of public order, ordered their detention dubbing them as Goondas.

4. The main contention of the learned counsel for the petitioners is that the detention of the detenus was not communicated to their family members.

5. We have perused the materials available on record. In the grounds of detention, it is stated that the detenus were arrested on 22.6.2007, produced before the Judicial Magistrate on 23.6.2007 for remand and the arrest of the detenus was intimated to the family members of the detenus on the same day by telegram. But, the detaining authority, admittedly, has not enclosed copy of the telegram, wherein the arrest of the detenus was alleged to have been intimated to the relatives of the respective detenus, in the paper book furnished to the detenus.

6. At this juncture, the learned Additional Public Prosecutor by producing the receipts for sending telegrams submits that the arrest and the place of detention of the detenus were promptly communicated to the relatives of the detenus.

7. The learned Additional Public Prosecutor has produced only the receipts for sending telegram. Neither the contents of the telegram, nor the address to which the telegram was sent were produced before this Court. A mere receipt for sending telegram without producing the contents or the address to which it was sent will not be a substantial evidence to prove that the family members of the detenus were informed about the detention of the detenus and their place of detention.

8. The object and purpose of informing the members of the detenu's household in writing of the passing of the order of detention and taking in custody of the detenu as also the place of detention immediately after the detenu is taken in custody pursuant to the order, is that the family members of the detenu should not be kept in darkness by withholding the information about the passing of the order of detention and the place of detention thereby preventing them from having any access and from rendering any help or assistance to the detenu and similarly the detenu should not be deprived of the privilege of meeting his relations and getting any help or assistance, vide Union of India v. Vasanbharathi, [1990] 2 SCC 275.

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9. In the cases on hand, no material was produced before us to justify that the family members of the detenus have been informed about the detention of the detenus and their place of detention. If that be so, the orders of detention are vitiated. These petitions must succeed and the same are ordered as prayed for. The detention orders dated 24.7.2007 are set aside. The detenus are directed to be set at liberty forthwith unless their custody is required in connection with any other case.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ATR

To:

1. The District Collector and
   District Magistrate
   Kancheepuram District
   Kancheepuram.

2. The Secretary to Government
   Government of Tamil Nadu
   Prohibition and Excise Department
   Fort St. George, Chennai-9.

3. The Superintendent
   Central Prison
   Puzhal, Chennai.

4. The Joint Secretary to Government,
   Public (Law and Order)
   Fort St.George, Chennai -9.

5. The Public Prosecutor
   High Court, Madras.

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10 cc To M/s.Ganesh & Ganesh, Advocate, SR.72990 to 72995.

HCP Nos.1361 to 1364 & 1427/2007

NSM(CO)
RVL 26.12.2007

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